

AT A REGULAR MEETING OF THE CULPEPER COUNTY BOARD OF SUPERVISORS HELD IN THE BOARD ROOM, LOCATED AT 302 N. MAIN STREET, ON TUESDAY, OCTOBER 3, 2006.

Board Members Present: *John F. Coates, Chairman*
Steven E. Nixon, Vice-Chairman
Larry W. Aylor
William C. Chase, Jr.
Sue D. Hansohn
Brad C. Rosenberger
Steven L. Walker

Staff Present: Frank T. Bossio, County Administrator
J. David Maddox, County Attorney
John C. Egertson, Planning Director
Sam McLearen, Zoning Administrator

Staff Absent: Peggy S. Crane, CMC, Deputy Clerk

CALL TO ORDER

Mr. Coates, Chairman, called the meeting to order at 7:00 pm.

CITIZEN FORUM

Mr. Coates opened the Citizen Forum and called for comments on any item that was not on the agenda.

Mr. D. R. Griffith, Stevensburg District, stated he was elaborating on his comments made at the Board's September meeting regarding the Bowen Tract. He displayed two drawings of the drainfields on that tract both of which carried the approval of the Health Department and dated August 5, 2006, and noted there were discrepancies between the two. He expressed concern that 80 percent of the runoff from the Bowen Tract ran across his property, on to the adjoining property, and into the Rapidan River, and questioned whether that was in compliance with County Code. He discussed the number of houses that were proposed for the site and the cost per household to educate each child, and felt that the County would be losing money in the process.

Ms. Pat Ballard, Co-Director of the Clairmont Manor Homeowners Association, began to speak regarding the proposed road for Clairmont Manor. Mr. Coates advised her that item was on the agenda for consideration later, and she should delay her comments until that time.

With no further comments, Mr. Coates closed the Citizen Forum.

Mrs. Hansohn asked that staff review the information that Mr. Griffith presented and

provide answers at the next Board meeting to the questions raised.

APPROVAL OF AGENDA - ADDITIONS AND/OR DELETIONS

Mr. Nixon moved, seconded by Mr. Walker, to approve the agenda as presented.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

Mr. Coates announced that the Board was pleased to acknowledge Dr. Craig Mello of the University of Massachusetts would share the Nobel Prize in Medicine in the amount of \$1.4 million with Dr. Andrew Fire of Stanford University. Dr. Mello is the son of Jim and Sally Mello of Rixeyville. He congratulated the family and noted this was the first time anyone in Culpeper had been recognized in this manner.

PUBLIC HEARING(S) – NONE

NEW PLANNING COMMISSION BUSINESS

ADDITION TO THE WATERFORD RUN AGRICULTURAL AND FORESTAL DISTRICT.

Request by Margaret A. Bogie and Thomas D. Snider to add 93.48 acres to the Waterford Run Agricultural & Forestal District. The property is located off Route 627 in the Catalpa Magisterial District. Tax Map/Parcel Nos. 11/7, 8.

Mr. Sam McLearen, Zoning Administrator, informed the Board that the Planning Commission had considered the case and a public hearing was held. The Planning Commission concurred with the Agricultural and Forestal Districts Advisory Committee that this addition to the Waterford Run Agricultural and Forestal District was appropriate. He said the Planning Commission was recommending to the Board of Supervisors that the 93.48-acre addition to the Waterford Run Agricultural and Forestal District be approved.

Mr. John C. Egertson, Planning Director, displayed a copy of the tax map that highlighted the existing Waterford Run Agricultural and Forestal District and indicated the location of the proposed addition, which was a horse farm. He said that with the approvals of the Planning Commission and the Agricultural and Forestal Districts Advisory Committee, it was ready for the Board's consideration. He stated that the applicants were unable to be present, but he would answer any questions.

Mr. Coates opened the public hearing and called for public comments.

There were none, and Mr. Coates closed the public hearing.

Mrs. Hansohn moved, seconded by Mr. Nixon, to approve the addition to the

Waterford Run Agricultural and Forest District.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

WITHDRAWAL FROM THE CROOKED RUN AGRICULTURAL AND FORESTAL DISTRICT. Request by Joseph Baltimore and Janet Hutko to withdraw 139.33 acres from the Crooked Run Agricultural & Forestal District. The property is located off Route 752 in the Salem Magisterial District. Tax Map/Parcel No. 48/29.

Mr. McLearen informed the Board that the Planning Commission had considered the case and a public hearing was held. The Planning Commission concurred with the Agricultural and Forestal Districts Advisory Committee and recommends that this application for withdrawal from the Crooked Run Agricultural and Forestal District be approved based upon the following consideration: (1) Sufficient evidence of hardship had been demonstrated; and (2) the property would be readmitted to the Crooked Run Agricultural and Forestal District. He said that the Planning Commission was recommending to the Board of Supervisors that the 139.33-acre withdrawal from the Crooked Run Agricultural and Forestal District be approved.

Mr. Egertson displayed a copy of the tax map that highlighted the existing District, and indicated the location of the proposed withdrawal. He noted that the parcel remaining after the withdrawal was over the 200-acre minimum and would remain as a viable Agricultural District. He said that the Planning Commission and the Agricultural and Forestal Districts Advisory stipulated that the applicants would readmit the balance of the property after they completed the creation of a single 10-acre lot from the property. He noted that the applicants had paid the fee and begun the process to put the balance of the property back into the District. He said that with the approvals of the Planning Commission and the Agricultural and Forestal Districts Advisory Committee, it was ready for the Board's consideration.

Ms. Janet Hutko, applicant, was present to represent the case.

Mr. Coates opened the public hearing and called for public comments.

There were none, and Mr. Coates closed the public hearing.

Mr. Nixon moved, seconded by Mr. Aylor, to approve the withdrawal from the Crooked Run Agricultural and Forest District.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

THREE FLAGS/CULPEPER LLC – 464 LOT SUBDIVISION. Request by Three Flags/Culpeper LLC for approval of a 464-lot subdivision known as Three Flags, Phase Two. The property is located on Route 29 and Route 299 in the Cedar Mountain Magisterial District and Phase Two contains approximately 258 acres. Tax Map/Parcel Nos. 50/4, 5.

Mr. McLearen informed the Board that the Planning Commission had considered the case and a public hearing was held. The Planning Commission found this application to be in compliance with the Zoning and Subdivision Ordinances. He said the Planning Commission recommended that no connection of the Three Flags roads be made to Clair Manor Drive, other than providing solely for potential emergency access. This recommendation was made contingent upon the Board's finding of adequate justification under the variation provisions of Section 960 of the Subdivision Ordinance. He said that the Planning Commission was recommending to the Board of Supervisors that the subdivision be approved as noted above.

Mr. Egertson displayed a copy of the tax map that highlighted the location of the property being requested for preliminary subdivision approval. He pointed out that the Board had previously approved Phase One of Three Flags, which was presently under construction and consisted of approximately 231 lots. This request for Phase Two covered the balance of the Three Flags property for 464 lots, 463 single-family dwelling lots and one additional lot that would be subject to site plan approval for the multifamily portion of the project. He stated that the zoning would allow up to 1,012 units, but depending upon how many multifamily units were derived, the development should have approximately 900 units. He stated that the preliminary plan before the Board for consideration had been approved by VDOT and the Soil and Water Conservation District, and the Town had approved water and sewer service.

Mr. Egertson pointed out that one of the major issues in Phase One had been the erosion and sediment control for the protection of Mountain Run Lake. He said there were a new developer and a new engineer in Phase Two and provided the Board with copies of a letter prepared by Dewberry Engineers outlining their efforts to address these issues in Phase Two. He indicated that Phase One was approved as one large area and the land

was disturbed nearly 100 percent for a long period of time. The second phase would be broken into seven sections and each section would be stabilized in terms of erosion control before the next section could begin, and he felt that should provide better control over the progress of the project. He said there would be four storm water management ponds designed to provide water quality controls and to meet the storm water outfall requirements. He noted that the engineer had met with the Soil and Water Conservation District, representatives from Angler Environmental, and Town and County staffs to help establish the preliminary plan.

Mr. Egertson stated that the issue raised at the Planning Commission was the connection to Clair Manor Drive proposed as part of the Three Flags Subdivision. He noted that Three Flags did not need a connection to Clair Manor Drive in order to comply with County ordinances, but Clairmont Subdivision was dependent upon it for a secondary access and had included a stub street for that purpose. He said after residents of Clairmont Subdivision raised concerns, the Planning Commission felt a compromise could be reached whereby a road could be constructed through Three Flags open space to Clair Manor Drive to serve as an emergency access. He displayed a drawing that showed a "hammer head" at the end of the road prior to its connection to Clair Manor Drive, with stripes painted to indicate there would be no parking and breakaway or flexible type bollards installed to discourage the use of the road as a through street. He said the road would be easily passable by either an emergency vehicle trying to enter Clairmont or by Clairmont residents trying to exit the subdivision in the event the main entrance was blocked.

Mr. Egertson stated that Section 960 of the County's Subdivision Ordinance permitted variations of the standards when an unusual situation existed that would make it desirable to vary the standards and it could be shown to be in the public interest. He noted that the variation would allow Clairmont Manor to have a single access point or cul-de-sac street that would be substantially longer than the normal 1,000-foot limit. He said the proposed solution would be to provide for the road that would not be fully connected for through traffic, but would provide for the passage of emergency traffic. He stated that staff supported the concept in relation to Section 960 for the following reasons: (1) Clairmont Manor was an established 20-year-plus subdivision, with approximately 74 lots, and the interconnection with a 900 unit, high-density development could potentially create traffic and safety problems within Clairmont Manor; (2) there was no commercial destination or other

use within Clairmont Manor that would suggest additional access was needed and, if the connection were provided, it would only serve for the most part as a potential shortcut; and (3) the intent of the ordinance was to provide a secondary access in and out of the development for emergency situations which the suggested proposal would accomplish. He stated that Clairmont Subdivision residents were in favor of this change.

Mr. David Maddox, County Attorney, recommended that the Board consider the recommendation of Mr. Egertson and the staff and that any motion should incorporate Mr. Egertson's statement regarding the factors involved in the requirements of Section 960 of the Subdivision Ordinance.

Mr. Nixon asked whether the "no-man's" land between Three Flags and Clairmont would be a gravel area. Mr. Egertson replied that the concept which he and the engineer reached was to have a grass strip coming from the Three Flags property just short of the end of the Clairmont Manor cul-de-sac with a hammerhead, and the open space would be maintained by the Three Flags homeowners association. Mr. Nixon expressed his concern regarding access for emergency vehicles in the event of wet and muddy conditions. Mr. Egertson said that the Board could ask that the area be graveled, but it would require clearing vegetation at the end of Clair Manor Drive and the installation of a culvert. He felt that the grass strip would be passable and adequately maintained.

Mr. Walker asked how the seven separate sections of development in Three Flags would be controlled. Mr. Egertson explained that plans for each section would be submitted and recorded one phase at a time and it would be required that the roads, the water and sewer lines, and all of the infrastructure to be in place, with the ground stabilized and a land disturbance permit before moving to the next section. He stated that did not mean every house had to be completed in a particular section, but the subdivision infrastructure would have to be in place and the area fully stabilized before moving to the next phase. Mr. Walker asked whether the final plans would be reviewed by the Planning Commission or undergo an administrative review. Mr. Egertson replied that the review would be done administratively.

Mr. Coates inquired as to the level of maintenance for the proposed road. Mr. Egertson replied that maintenance would be minimal because the road would not be connected to Clair Manor Drive and it would be maintained by the Three Flags homeowners association because there were no homes on it. He noted there were alleyways within the

Three Flags development that would also have to be maintained by their homeowners association. He added that the proposed road would be extremely short and built to VDOT standards, but would not be accepted into the VDOT system.

Mr. Nixon stated that Three Flags had posted a \$1 million escrow fund to cover any sedimentation into Lake Pelham and asked whether additional funds had been pledged for the new sections. Mr. Egertson replied that the developer would carry the \$1 million bond into Phase Two and it would remain in effect during all phases of the development.

Mr. Tom Davis of JCE, Inc., applicant, stated that Three Flags would like to proceed with the final engineering for the balance of the property and bring those phases online as Phase One was building out. He estimated it would be an extended period of time before another subdivision plan could be approved and development begun for the next 80 to 100 lots and that was why they were proceeding with preliminary plan approval at this time. He described the meetings with County staff and the Soil and Water Conservation District to develop a plan to proceed with developing the property into seven sections, which would be engineered as independent sections submitted separately to County staff for approval. He said they had submitted a plan for storm water management facilities for the entire site that proposed four storm water management ponds strategically located around the property, and that plan would be implemented as needed for each of the subdivision sections before water would be discharged into that drainage shed. He said that Angler Environmental and Dewberry were making every effort to ensure that the balance of the development would not encounter the same erosion and control problems that were encountered during the first phase. He added that he had worked with Clairmont Subdivision to develop the emergency access, and the homeowners association would have no problem maintaining the roadway.

Mr. Nixon asked Mr. Davis how he could assure the Board that the same storm water drainage problems encountered in Phase One would not be repeated in Phase Two. Mr. Davis replied that the property had already been completely cleared and under development before they acquired the property and the erosion controls were being handled by onsite smaller basins and silt fencing. He said since the property had been acquired, all onsite drainage was being directed to the larger storm water management ponds and that program would be followed for the balance of the development.

Mr. Nixon stated he agreed with the compromise reached regarding the connection between Three Flags and Clairmont Manor, but had concerns about the “no-man’s” zone

being maintained and stabilized so that emergency vehicles could actually have access when necessary. Mr. Davis stated that the area consisted of a flat solid ground surface and no drainage was involved, but if a situation arose that stabilization was required either in the form of gravel or putting a product called "grass-crete" under the grass for support, they would certainly do that to ensure that the access was passable in any weather condition.

Mr. Coates noted that the association would maintain the alleyways and asked Mr. Davis if he could verify that the association would remain active. Mr. Davis stated that the homeowners association would be established under the Virginia Property Owners Association Act and anyone who accepted title to a lot would be obligated to pay an assessment and become a member of the association.

Mr. Walker asked how many homes had been completed in the first phase. Mr. Davis estimated that approximately 45 to 50 had been built, and another 20 were in the process of being sold and/or being constructed.

Ms. Pat Ballard, a Co-Director of the Clairmont Manor Homeowners Association, spoke at length in support of the compromise reached to allow the road through Three Flags to Clair Manor Drive with a buffer between the roads so that only emergency vehicles would have access. She endorsed the concept of the having the no parking area with flexible bollards to prevent access by other vehicles. She stated the major concern of the Homeowners Association, which was voiced at the Planning Commission public hearing, was the safety and well being of the residents of Clairmont and others who came into the subdivision to walk and bike on their streets. She said the plan before the Board was a viable proposal and asked for the Board's approval. She asked the residents of Clairmont Manor who were present to stand to indicate their support for the proposal.

Mr. Jim Gearing, Cedarbrooke Subdivision, Cedar Mountain District, stated that he and his family owned Westco Builders and had been building homes in the Town and County since 1979. He said that Cedarbrooke Subdivision adjoined the Three Flags property and his major concern was the sediment retention ponds. He displayed a drawing that showed the large section that he owned which contained a two-and-a-half to three-acre pond on it. He said that the Culpeper Water and Soil Conservation District and DEQ had approved the strategic locations of sediment retention ponds, but he indicated an area where an entire pond was discharging into his pond. He said he and several homeowners in Cedarbrooke had a vested interest in ensuring that their pond would not be used as

another Lake Pelham. He said he visited the Three Flags site today and the area did not look any better than it did three years ago. He stated he had two points of concern: The storm water retention pond and the buffer area. He acknowledged that Mr. Egertson and his staff had met with him and he had made contact the engineer at Dewberry Davis. He said that Dewberry Davis talked with him recently and delivered a proposal to his office that he only reviewed today because he was out of town during the weekend. The proposal was to redirect part of the spillway through the bottom part of his property and into Gaines Run. He stated that since this was his only chance to make public comment, he urged the Board to consider having the storm water retention pond that adjoined his property reviewed before approving the plan.

Ms. Gail Higgins, Cedarbrooke Subdivision, Cedar Mountain District, stated she had attended all meetings held by the Planning Commission and the Board of Supervisors concerning the Three Flags development, and she wanted to be sure that the maximum number of homes to be built was on public record so that the number could not be increased at a later date. She stated that her major concern with the Phase Two plan was the soil and water management pond "C" which was adjacent to her property. She stated that in 2002, when she brought her home the plan showed a golf course adjacent to Cedarbrooke and Three Flags, but the current plan showed the largest storm water management pond in that adjacent space. She said in her discussions with staff, she was told the area would be a natural area and not be a lake or a pond, but she was concerned they would be building a marsh area that would attract snakes and breed flying pests. She said she was not opposed to wildlife because they were frequently visited by squirrels, chipmunks, deer, etc. She asked that the Board deny approval to the subdivision because of the proposed storm water management system.

Mr. Gary Rafala, Clairmont Manor Subdivision, Cedar Mountain District, spoke in favor of the proposed buffer between Three Flags and Clairmont Manor because it would not increase the traffic flow and disrupt the community and asked the Board to consider the change as proposed.

With no further comments, Mr. Coates closed the public hearing.

Mr. Coates asked whether the Planning Commission had discussed the drainage issues, especially having one pond drain into another. Mr. Egertson replied that the Planning Commission had discussed the drainage issues. He pointed out that the storm

water ponds were the keystone to the erosion control effort on the site, and it was very important to have multiple ponds to serve as silt basins during development and they would be dry ponds for storm water. He said he had spoken to Mr. Ebaugh with Dewberry regarding Mr. Gearing's concerns, and he would explore whether the outfall from the pond could be rerouted into the stream below the Cedarbrooke pond. He stated that this option would require cooperation from Mr. Gearing because in order to bypass the Cedarbrooke pond and get back into the channel, they would need to have an easement on his property. He stated no conclusion had been reached, but staff would continue to look at this issue.

Mr. Coates stated that the Board had to rely on the staff and Planning Commission for their recommendations, but he was not comfortable with creating a drainage problem that should be addressed before the plan was approved.

Mr. Egertson pointed out that there was a natural stream course that flowed from the Three Flags property into the lake in Cedarbrooke. He said if a storm water management pond was going to be created, it needed to be created along those drainage courses in order to drain into the pond. He stated that this pond had been designed for a 100 year storm which was well beyond the 10 year storm that would normally be required. He said this had been taken into account by the Soil and Water Conservation District and County staff in reviewing the plan, and after any major storm, the water would flow slowly out as it flowed in, and it should not have a negative impact on Cedarbrooke.

Mr. Coates asked whether the siltation would be going into the Cedarbrooke pond. Mr. Egertson stated that the siltation should be trapped in the pond on the Three Flags property.

Mr. Nixon suggested that the request be postponed for 30 days to allow Mr. Ebaugh and Mr. Gearing to arrive at a more equitable solution to the drainage issues and to bring the results to the Board meeting next month. Mr. Egertson stated he was agreeable to postponing the request. He pointed out that efforts to reach a solution had been ongoing for the past 30 days and had continued up to the time of the Board meeting.

Mr. Nixon moved, seconded by Mr. Walker, to postpone the request for 30 days.

Mr. Aylor stated he would not support the motion since the Planning Commission had recommended approval. He stated he would rely upon the County staff and the Three Flags engineers to develop a proper plan to ensure that the drainage issue was adequately addressed. He said if the motion did not carry, he would make a motion to approve the

request.

Mr. Coates stated he appreciated Mr. Aylor's comments, but he would support the motion because he felt that the drainage issues needed further review.

Mrs. Hansohn said she would support the motion because she did not believe that 30 days would cause any harm to the project. She expressed her confidence in the County staff, but felt that Mr. Gearing needed to gain more confidence that there was an equitable solution to the problem.

Mr. Coates called for voice vote.

Ayes - Coates, Hansohn, Nixon, Rosenberger, Walker

Nays - Aylor, Chase

Motion carried 5 to 2.

ADJOURNMENT

Mrs. Hansohn moved, seconded by Mr. Nixon, to adjourn at approximately 8:00 p.m.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

Peggy S. Crane, CMC
Deputy Clerk

John F. Coates, Chairman

Frank T. Bossio
Clerk to the Board

APPROVED: November 8, 2006